

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JEFF GRAHAM and AMY MCCOY,

3:15-CV-00990-AC

Plaintiffs,

AMENDED ORDER

v.

U.S. BANK, NATIONAL
ASSOCIATION, As Trustee,
Successor In Interest To Bank
Of America, National
Association, Successor In
Interest To Lasalle Bank,
National Association, As
Trustee For Washington Mutual
Mortgage Pass-Through
Certificate Wmalt Series
2007-OA3 Trust; and PITE
DUNCAN, LLP,

Defendants.

BROWN, Judge.

Magistrate Judge John V. Acosta issued Findings and
Recommendation (#27) on December 2, 2015, in which he recommends

the Court grant in part and deny in part the Motion (#10) to Dismiss of Defendant U.S. Bank; grant in part and deny in part the Motion (#13) to Dismiss of Defendant Pite Duncan, LLP; and deny Defendants' Motions (#10, #13) to Strike Noneconomic Damages. Plaintiffs filed timely Objections to the Findings and Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). See also *Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)(*en banc*).

In their Objections Plaintiffs reiterate the arguments contained in their Response to Defendants' Motions to Dismiss, Amended Response to Defendants' Motions to Dismiss, Sur-Reply to Pite Duncan's Motion to Dismiss, and Plaintiffs' statements at oral argument. This Court has carefully considered Plaintiffs' Objections and concludes they do not provide a basis to modify the Findings and Recommendation. The Court also has reviewed the pertinent portions of the record *de novo* and does not find any error in the Magistrate Judge's Findings and Recommendation.

CONCLUSION

The Court **ADOPTS** Magistrate Judge Acosta's Findings and Recommendation (#27). Accordingly, the Court **DENIES** Defendants' Motions (#10, #13) to Strike Noneconomic Damages and **GRANTS IN PART** and **DENIES IN PART** Defendants' Motions to Dismiss as follows:

1. The Court **GRANTS** Defendants' Motions to Dismiss as to Plaintiffs' claim for declaratory judgment.
2. The Court **GRANTS** Defendants' Motions to Dismiss as to Plaintiffs' claims for trespass to real property/nuisance and negligence.
3. The Court **DENIES**¹ Defendants' Motions to Dismiss as to that portion of Plaintiffs' claim for trespass to chattels related to "Defendants' refusal to allow Plaintiffs to remove their personal property" as set out in the Findings and Recommendation.
4. The Court **GRANTS** Defendants' Motions to Dismiss as to the remainder of Plaintiffs' claim for trespass to chattels.

¹ On January 22, 2016, the Court issued an Order (#32) adopting the Findings and Recommendation and granting in part and denying in part Defendants' Motions to Dismiss. In its Order the Court incorrectly stated it granted this portion of Defendants' Motions and denied Defendants' Motions to Dismiss as to the remainder of Plaintiffs' claim for trespass to chattels. The Court issues this Amended Order to correct the error.

5. The Court **DENIES** Defendants' Motions to Dismiss as to that portion of Plaintiffs' Unfair Trade Practices Act (UTPA) claim set out in ¶ 38A of Plaintiffs' Complaint that involves "communications [not] related to actual or reasonably anticipated litigation" as set out in the Findings and Recommendation.

6. The Court **GRANTS** Defendants' Motions to Dismiss as to the remainder of Plaintiffs' UTPA claim.

IT IS SO ORDERED.

DATED this 1st day of February, 2016.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge